

## JOURNAL OF THE HOUSE.

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Monday, December 5, 2005.

Met according to adjournment, at eleven o'clock A.M., in an informal session, with Mr. Petrolati of Ludlow in the Chair (having been appointed by the Speaker, under authority conferred by Rule 5, to perform the duties of the Chair).

Prayer was offered by the Reverend Robert F. Quinn, C.S.P., Chaplain of the House, as follows:

God, Our Creator, in Whom we place our hope and trust, we depend upon You, Your guidance and Your gift of wisdom in our struggle to address often complex and sensitive current and future legislative proposals. Teach us to be good listeners to Your imperatives and to the views and experiences of constituents and associates. We pray for the patience to evaluate correctly the vast amount of data, reports and poll results which cross our desks daily. In Your goodness, help us to cope with the demands which are made upon us and our time. May we have the courage to do what is right, fair and ethical in meeting our daily tasks.

Grant Your blessings to the Speaker, the members and employees of this House and their families. Amen.

At the request of the Chair (Mr. Petrolati), the members, guests and employees joined with him in reciting the pledge of allegiance to the flag.

### *Changes to a Joint Special Commission.*

The Speaker announced the changes to the membership of the the special commission established (pursuant to item 4512-0200 of section 2 of chapter 149 of the Acts of 2004) to make an investigation and study of the diagnosis, prevention and treatment of cervical cancer in the Commonwealth, as follows:

That Representatives Koutoujian of Newton had been relieved of duty (at his own request) as chairperson and that he had been appointed to the fifth position on said commission, that Ms. Christie Hager of Boston had respectfully declined her appointment to said commission, and that Representative Harkins of Needham had been appointed to the third position, and Representative Canavan of Brockton had been appointed to the fourth position on said commission.

The membership of said commission on the part of the House is as follows:

Representative Candaras of Wilbraham (Chairperson);  
 Representative Balser of Newton (Vice-Chairperson);  
 Representative Harkins of Needham;  
 Representative Canavan of Brockton; and  
 Representative Koutoujian of Waltham.

*Resolutions.*

The following resolutions (filed with the Clerk) were referred, under Rule 85, to the committee on Rules:

Resolutions (filed by Messrs. Kulik of Worthington, Donelan of Orange, Bosley of North Adams and Guyer of Dalton) celebrating the fortieth anniversary of Franklin Community Action Corporation;

Resolutions (filed by Mr. LeDuc of Marlborough) on the retirement of Fire Chief John Thomas Kyle;

Resolutions (filed by Ms. Wolf of Cambridge) congratulating Margaret A. McKenna on the occasion of her twentieth anniversary as President of Lesley University; and

Resolutions (filed by Ms. Wolf of Cambridge) congratulating Robert Sweeney on the occasion of his ninety-ninth birthday and his award from the Cambridge YMCA;

Mrs. Parente of Milford, for the committee on Rules, reported, in each instance, that the resolutions ought to be adopted. Under suspension of the rules, in each instance, on motion of Mr. Smizik of Brookline, the resolutions (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith; and they were adopted.

*Petition.*

Mr. Murphy of Burlington presented a petition (accompanied by bill, House, No. 4556) of Charles A. Murphy (by vote of the town) for legislation to regulate the number of write-in votes for the office of town meeting member in the town of Burlington; and the same was referred to the committee on Election Laws. Sent to the Senate for concurrence.

*Papers from the Senate.*

A Bill designating a certain bridge in the town of Dighton as the Lance Corporal John J. VanGyzen memorial bridge (Senate, No. 1945, changed in section 1, in line 2, by inserting after the word "named" (as printed) the following: "the Lance Corporal John J. Van Gyzen IV") (on a petition), passed to be engrossed by the Senate, was read; and it was referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Mr. Donato of Medford, for said committee, reported that the matter be scheduled for consideration by the House.

Under suspension of the rules, on motion of Mr. Binienda of Worcester, the bill was read a second time forthwith; and it was ordered to a third reading.

A Bill designating a certain bridge in the town of Carver as the SFC Robert Rooney Bridge (Senate, No. 1944) (on House, No. 1691), passed to be engrossed by the Senate, was read; and it was referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

A report of the Senate committee on Ways and Means, asking to be discharged from further consideration of the Senate Bill relative to public library construction funding (Senate, No. 1841), and recommending that the same be referred to the committee on Bonding,

Capital Expenditures and State Assets,— accepted by the Senate, was considered forthwith, under Rule 42; and it was accepted, in concurrence, insomuch as relates to the reference.

A report of the committee on Labor and Workforce Development, asking to be discharged from further consideration of the petition (accompanied by bill, Senate, No. 272) of Mark C. Montigny, Steven A. Tolman, Richard R. Tisei, Robert M. Koczera and other members of the General Court for legislation to authorize the funding of capital expenditures for workforce development and adult basic education, and recommending that the same be referred to the committee on Bonding, Capital Expenditures and State Assets,— accepted by the Senate, was considered forthwith, under Rule 42; and it was accepted, in concurrence.

A petition (accompanied by bill, Senate, No. 2300) of Therese Murray (by vote of the town) for legislation relative to health insurance for paid elected officials in the town of Sandwich, was referred, in concurrence, to the committee on Public Service.

*Reports of Committees.*

By Mr. Donato of Medford, for the committee on Steering, Policy and Scheduling, that the House Bill further regulating the opening of retail stores on Sundays (House, No. 4555) be scheduled for consideration by the House.

Under suspension of the rules, on motion of Mr. Driscoll of Braintree, the bill was read a second and (having been reported by the committee on Bills in the Third Reading to be correctly drawn) a third time forthwith; and it was passed to be engrossed. Sent to the Senate for concurrence.

By Mr. Donato of Medford, for the committee on Steering, Policy and Scheduling, that the House Bill authorizing the treasurer of the town of Brookline to invest the trust fund of said town in accordance with the Prudent Man Rule (House, No. 4222) be scheduled for consideration by the House.

Under suspension of Rule 7A, on motion of Mr. Smizik of Brookline, the bill was read a second time forthwith; and it was ordered to a third reading.

By Mr. Koutoujian of Waltham, for the committee on Public Health, on House, Nos. 1638, 1639, 2102, 2626, 2640, 2717, 2718, 2747, 2855, 3657, 3658 and 3814, an Order relative to authorizing the committee on Public Health to make an investigation and study of certain House documents concerning the public health of the Commonwealth (House, No. 4557). Referred, under Joint Rule 29, to the committees on Rules of the two branches, acting concurrently.

Subsequently Mr. Scaccia of Boston, for said committees, reported, asking to be discharged from further consideration of the order; and recommending that the same be referred to the House committee on Rules. Under Rule 42, the report was considered forthwith; and it was accepted.

Franklin  
Community  
Action  
Corporation.  
John Thomas  
Kyle.

Margaret A.  
McKenna.

Robert  
Sweeney.

Burlington,  
town  
meeting.

Dighton,  
Van Gyzen  
Bridge.

Carver,  
Rooney  
Bridge.

Public  
library  
fund.

Adult basic  
education  
fund.

Sandwich,  
health  
insurance.

Retail  
stores,  
opening.

Brookline,  
investments.

Public  
health,  
study.

Gardner,  
alcoholic  
beverage  
license.

By Mr. Pedone of Worcester, for the committee on Consumer Protection and Professional Licensure, on House, No. 4372, a Bill authorizing the city of Gardner to grant an additional license for the sale of all alcoholic beverages to be drunk on the premises (House, No. 4558) [Local Approval Received].

Westborough,  
alcohol  
beverage  
license.

By the same member, for the same committee, on House, No. 4456, a Bill authorizing the town of Westborough to grant an additional license for the sale of wine and malt beverages not to be drunk on the premises (House, No. 4559) [Local Approval Received].

Severally read; and referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

#### *Engrossed Bills.*

Engrossed bills

Establishing the office of finance director in the city of Northampton (see House, No. 4186, changed); and

Providing for two associate conservation commission members in the town of Hanover (see House, No. 4349);

(Which severally originated in the House);

Severally having been certified by the Clerk to be rightly and truly prepared for final passage, were passed to be enacted; and they were signed by the acting Speaker and sent to the Senate.

#### *Orders of the Day.*

The engrossed Bill relative to tax laws (see House, No. 4169, amended), which had been returned to the House by His Excellency the Governor with recommendation of amendment (for message, see House, No. 4520), was considered in the following form (as approved by the committee on Bills in the Third Reading):

By striking out section 57 and inserting in place thereof the following three sections:

“SECTION 57. Section 413 of chapter 149 of the acts of 2004 is hereby repealed.

SECTION 57A. The introductory clause of Section 414 of said chapter 149 is hereby amended by striking out the date ‘January 1, 2002’ and inserting in place thereof the following date:— January 1, 2005.

SECTION 57B. Notwithstanding any general or special law to the contrary, to the extent that, as a result of the enactment of section 57 and 57A, any taxpayer has overpaid tax due under chapter 62 of the General Laws with respect to long term capital gains recognized in taxable years beginning on or after January 1, 2002 and before January 1, 2003, the following provisions shall apply:—

(a) Such taxpayers may apply for abatement of the overpayment of tax on long-term capital gains for said taxable years pursuant to section 37 of chapter 62 of the General Laws, on or before June 30, 2006, within 3 years from the due date for such return, determined without regard to extensions, within 2 years from the date of assessment or deemed assessment of such tax on long-term capital gains, or within 1 year of the date of payment of such tax on long-term capital gains, whichever is later.

(b) The taxpayer must apply for such abatement upon the forms or in the manner determined by the commissioner of revenue, and shall provide such documentation of the overpayment as said commissioner may require.

(c) The commissioner shall abate any such overpayment in 3 annual installments, substantially equal in amount, without interest.

(d) The commissioner shall offset any proposed abatement under this section by the amount of any additional tax due from the taxpayer under chapter 62 of the General Laws for the taxable year, whether or not the additional tax relates to capital gains, and whether or not such additional tax may otherwise be timely assessed under said chapter 62 of the General Laws.

(e) An amount due to be refunded to a taxpayer under this section shall not be treated as a tax payment or credit until such time as it becomes payable under paragraph (c).

(f) This section shall be the exclusive basis for any claim for refund of an overpayment of tax under chapter 62 of the General Laws with respect to long term capital gains recognized in taxable years beginning on or after January 1, 2002, and before January 1, 2003, and resulting from enactment of sections 57 and 57A of this act. No interest shall accrue or be payable with respect to such refunds, pursuant to section 40 of chapter 62 of the General Laws or otherwise.

(g) To the extent not inconsistent with the provisions of this act, the provisions of chapter 62C of the General Laws, including without limitation provisions allowing offsets of refunds for unpaid tax assessments, child support obligations, shall apply to refunds under this section.

(h) Notwithstanding paragraph (c), for reasons of administrative convenience, the commissioner may in his discretion refund payments to a taxpayer that total \$1000 or less in a single lump sum, without interest.”; and by striking out sections 56 and 58.”

Pending the question on adoption of the amendments recommended by the Governor, Messrs. DiMasi of Boston, DeLeo of Winthrop, Binienda of Worcester and Jones of North Reading moved that they be amended in proposed section 57B, in paragraph (c), by striking out the figure “3” and inserting in place thereof the figure “4”; and at the end of said amendment by striking out the following: “; and by striking out sections 56 and 58” and inserting in place thereof the following: “; and by striking out section 56”.

The further amendments were adopted.

The amendments recommended by the Governor, as amended, then also were adopted. Sent to the Senate for concurrence.

#### *Recesses.*

At twenty-seven minutes before twelve o’clock noon, on motion of Mr. Donato of Medford (Mr. Petrolati of Ludlow being in the Chair), the House recessed until half past twelve o’clock noon; and at that time the House was called to order with Mr. Petrolati in the Chair.

Recesses.

Bills  
enacted.

Tax  
laws.

The House thereupon took a further recess, on motion of Ms. Wolf of Cambridge, until a quarter after one o'clock P.M., and at twenty-seven minutes before two o'clock the House was called to order with Mr. Donato in the Chair.

*Emergency Measure.*

Tax  
laws.

The engrossed Bill relative to tax laws (see House, No. 4169, amended), having been certified by the Clerk to be rightly and truly prepared for final passage, was considered, the question being on adopting the emergency preamble.

A separate vote was taken, as required by the provisions of Article XLVIII (as amended by Article LXVII) of the Amendments to the Constitution; and the preamble was adopted, by a vote of 7 to 0. Sent to the Senate for concurrence.

Bill  
re-enacted.

Subsequently, the Senate having concurred in adoption of the emergency preamble, the bill (which originated in the House) (which had been returned by His Excellency the Governor with recommendation of amendment) was passed to be re-enacted, in its amended form; and it was signed by the acting Speaker and sent to the Senate.

*Order.*

On motion of Mr. DiMasi of Boston,—

Next  
sitting.

*Ordered,* That when the House adjourns today, it adjourn to meet on Thursday next at eleven o'clock A.M.

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At sixteen minutes after two o'clock P.M., on motion of Mr. Sullivan of Fall River (Mr. Donato of Medford being in the Chair), the House adjourned, to meet on Thursday next at eleven o'clock A.M., in an Informal Session.